RECENT CASES

ATTORNEY AND CLIENT—DISBARMENT—MISCONDUCT.—IN RE ROBERTSON ET AL., 132 N. W. REP., 684, (S. D.)—*Held,* that an attorney who fails to properly report collections and to keep adequate books relating thereto and his other business, and who is guilty of gross carelessness in not knowing the facts when writing a letter concerning collections, will not be disbarred for misconduct.

An attorney is an officer of the court. *Penobscot Bar v. Kimball,* 64 Me., 140; *Ex-parte Garland,* 4 Wall (U. S.), 333; *State v. Hanaford,* 43 W. Va., 773. Therefore the court has power to disbar him from practice. *Ex-parte Thompson,* 32 Ore., 499; *in re Duncan,* 64 S. C., 461; *Jackson v. State,* 21 Tex., 668. And in general attorneys may be disbarred at the discretion of the court for malpractice and unprofessional conduct. *In re Boone,* 83 Fed., 944; *in re Smith,* 73 Kan., 243; *State v. Stitles,* 48 W. Va., 425. Misconduct as to client is conduct justifying disbarment. *People v. Mead,* 29 Colo., 344; *People v. Payson,* 215 Ill., 476; *Tudor v. Commonwealth,* 27 Ky. Law Rep., 87. Misappropriation of client's funds and failure to account is such misconduct. *People v. Betts,* 26 Colo., 521; *in re Burris,* 101 Cal., 624; *Jeffries v. Lawrie,* 27 Fed., 195; *in re Temple,* 33 Minn., 343. But *Kane v. Haywood,* 66 N. C., 1, holds that where an attorney, losing the money while drunk and being now insolvent, does not pay over, he will not be disbarred. And mere carelessness and negligence in general is not sufficient ground for disbarment. *In re Lenz,* 65 N. J. L., 134; *in re Veeder,* 11 N. Mex., 43. Likewise misstatements to clients which do not defraud will not cause disbarment. *In re Collins,* 147 Cal., 8; *People v. Robinson,* 32 Colo., 241; *in re Duncan,* 64 S. C., 461. And *in re Thresher,* 29 Mont., 11, holds that retention of funds by an attorney to satisfy his personal claims does not merit disbarment.

DAMAGES—MENTAL SUFFERING—WILLFUL INJURY.—DAVIDSON V. LEE, 139 S. W., 904. (TEX.)—*Held,* that the rule that damages are not recoverable for mental suffering, unaccompanied by physical injury, is inapplicable where the wrong complained of is a willful one, intended by the wrongdoer to produce mental anguish, or from which such result should be reasonably anticipated.

The rule stated in the leading case has been approved by several other courts. *Williams v. Underhill,* 71 N. Y. Supp., 291; *Davis v. Railway Co.,* 35 Wash., 203. And it has been said that such damages are recoverable whether the wrongful act was willful or merely negligent. *R. R. Co. v. Christison,* 39 Ill. App., 495. They may be recovered in an action for disturbing a grave. *Bessemer Co. v. Jenkins,* 111 Ala., 135; *Meagher v. Driscoll,* 99 Mass., 281. In a similar case the rule is stated that wherever an act is a violation of a legal right, damages for mental suffering can be recovered, if they were the proximate and natural consequence of the

wrongful act. *Larson v. Chase,* 47 Minn., 307. Such damages were allowed in an action against a common carrier by a passenger who was kissed by the conductor against her will. *Craker v. R. R. Co.,* 36 Wis., 657. They have often been allowed in actions for the non-delivery or delay in delivering a telegram, where the company had notice that such failure or delay would probably cause mental suffering. *Young v. Telegraph Co.,* 107 N. C., 370; *Reese v. Telegraph Co.,* 123 Ind., 294; *Telegraph Co. v. Cooper,* 71 Tex., 507. But other courts held the contrary. *Chase v. Telegraph Co.,* 44 Fed., 554; *Summerfield v. Telegraph Co.,* 87 Wis., 1. In any case, such damages are recoverable for intense suffering only, and not for more disappointment or regret. *Hancock v. Telegraph Co.,* 137 N. C., 497.

DISCRETION OF COURT—NEW TRIAL—MISCONDUCT OF COUNSEL.—DOWNEY V. FINUCANE ET AL., 130 N. Y. SUPP., 988.—After the jury had retired for deliberation and in the absence of the presiding justice, counsel sent a newspaper statement which had been ruled out appended to an exhibit which the jury had called for. *Held,* in view of the trial court's positive instructions to disregard the statement, that the conduct of counsel was not such misconduct as to require a reversal of the order denying a new trial therefor. McLennan, P. J., *dissenting.*

The granting or refusing of a new trial on grounds of misconduct is a matter for the sound discretion of the trial court and the decision of the court will not be disturbed on appeal unless it is made affirmatively to appear that, that discretion has been abused prejudicially. *Sunberg v. Babcock,* 66 Iowa, 515; *Loucks v. C. M. & St. P. R. R. Co.,* 31 Minn., 526; *Tucker v. Salem Flouring Mills Co.,* 13 Ore., 28; *Olsen v. Gjersten,* 42 Minn., 407. Whether misconduct is prejudicial is to be determined by the trial court, *Watson v. St. Paul City Ry. Co.,* 42 Minn., 46, but in their decision the court uses a legal discretion which must be exercised in accordance with the rules of law under penalty of reversal, *Stockwell v. C. C. & D. R. Co.,* 43 Iowa, 470. On appeal the prejudicial effect respectively of—Misconduct of jury or party, *Hamm v. Romine,* 98 Ind., 77. Improper influence of jury by counsel, *Knowles v. Van Gorder,* 23 Minn., 197. Comments to jury in absence of judge on facts not in evidence, *Halls v. Wolff,* 61 Iowa, 559. Improper remarks to jury, *Conn. v. White,* 148 Mass., 430. Comments to third parties in jury's presence, *Shea v. Lawrence,* 83 Mass., 167. Disclosure by counsel to jury of the contents of a paper sought to be introduced in evidence, *Met. Str. Ry. Co. v. Powell,* 89 Ga., 601,—has been held to lie within the discretion of the trial court.

INFANTS—DISAFFIRMANCE OF DEEDS—LIMITATION.—PUTNAL V. WALKER, 55 So., 844 (FLA.).—*Held,* that where no estoppel arises against an infant at the time he makes a deed during infancy, and when there are no circumstances and no affirmative acts of his making it inequitable for him to remain inactive after attaining his majority, his mere silence or inertness for a period less than seven years, as fixed by the statute of limitations, after he reaches his majority, does not bar his right to disaffirm his deed made during infancy.